

Exhibit A

From: [Ewart, Jason C.](#)
To: [Pai, Rohan](#); [Dickinson, Charles](#); [Hall, Laura](#); [Wint, Corene](#); [Ma, Rachel](#); [RobertBernheim-contact](#); [JaymeWeber-contact](#); [NicoleGordon-contact](#); [ShiraHoffman-contact](#); [AmandaHamilton-contact](#); [WillMargrabe-contact](#); [PaulHarper-contct](#); [BrianYost-contact](#); [SchonetteWalker-contact](#); [GaryHonick-contact](#); [LucusTucker-contact](#); [SamanthaFeeley-contact](#); [JeffHerrera-contact](#); [JuliaMeade-contact](#); [CherylHiemstra-contact](#); [AngieMilligan-contact](#); [ChristineCortez-contact](#); [WilliamYoung-contact](#)
Cc: [Wolf, Matthew M.](#); [Pfaffenroth, Sonia Kuester](#); [Davis, Joshua M.](#); [Kientzle, Michael](#); [Yasmine Harik -contact](#); [Holler, John](#); [Cleveland, Christina](#); [mark.perry@weil.com](#); [Luna.Barrington@weil.com](#); [Bambo.Obaro@weil.com](#); [Luke.Sullivan@weil.com](#); [thassi@debevoise.com](#); [mschaper@debevoise.com](#); [srseiden@debevoise.com](#); [nborn@debevoise.com](#); [jmfried@debevoise.com](#); [mcardena@debevoise.com](#); [tebuckley@debevoise.com](#); [htmehler@debevoise.com](#); [msventim@debevoise.com](#); [mike.cowie@dechert.com](#); [james.fishkin@dechert.com](#); [thomas.miller@dechert.com](#); [emainigi@wc.com](#); [jpitt@wc.com](#); [apodoll@wc.com](#); [Holler, John](#); [Ellingsen, Andrew](#)
Subject: RE: 3:24-cv-00347-AN FTC et al. v. Kroger Co. et al. - Expert Report of Dr. Mark Israel
Date: Sunday, July 21, 2024 3:00:40 PM
Attachments: [image001.png](#)
[2024.07.20 - FTC v. Kroger Albertsons - Israel Expert Report - Federal - Errata REDLINE - HIGHLY CONFIDENTIAL.docx](#)

Rohan -

Attached is a redline of Dr. Israel's July 20 corrected report that identifies the corrections reported in the July 20 errata. Those changes reflect corrections to the number and identity of grocery stores Dr. Israel's initial report indicated were inside Dr. Hill's putative geographic markets but are actually located outside of those putative markets. Dr. Israel's corrected report is consistent with our obligations under FRCP 26(e).

Thanks,
Jay

From: Pai, Rohan <rpai@ftc.gov>
Sent: Sunday, July 21, 2024 10:59 AM
To: Ewart, Jason C. <Jason.Ewart@arnoldporter.com>; Dickinson, Charles <cdickinson@ftc.gov>; Hall, Laura <lhall1@ftc.gov>; Wint, Corene <cwint@ftc.gov>; Ma, Rachel <rma@ftc.gov>; RobertBernheim-contact <Robert.Bernheim@azag.gov>; JaymeWeber-contact <Jayme.Weber@azag.gov>; NicoleGordon-contact <Nicole.Gordon@doj.ca.gov>; ShiraHoffman-contact <Shira.Hoffman@doj.ca.gov>; AmandaHamilton-contact <Amanda.Hamilton@dc.gov>; WillMargrabe-contact <will.margrabe@dc.gov>; PaulHarper-contct <Paul.Harper@ilag.gov>; BrianYost-contact <Brian.Yost@ilag.gov>; SchonetteWalker-contact <swalker@oag.state.md.us>; GaryHonick-contact <ghonick@oag.state.md.us>; LucusTucker-contact <LTucker@ag.nv.gov>; SamanthaFeeley-contact <SFeeley@ag.nv.gov>; JeffHerrera-contact <jherrera@nmag.gov>; JuliaMeade-contact <jmeade@nmag.gov>; CherylHiemstra-contact <Cheryl.Hiemstra@doj.state.or.us>; AngieMilligan-contact <amilligan@lvklaw.com>; ChristineCortez-contact <cortez@lvklaw.com>; WilliamYoung-contact <william.young@wyo.gov>
Cc: Wolf, Matthew M. <Matthew.Wolf@arnoldporter.com>; Pfaffenroth, Sonia Kuester <Sonia.Pfaffenroth@arnoldporter.com>; Davis, Joshua M. <Joshua.Davis@arnoldporter.com>; Kientzle, Michael <Michael.Kientzle@arnoldporter.com>; Harik, Yasmine <Yasmine.Harik@arnoldporter.com>; Holler, John <John.Holler@arnoldporter.com>; Cleveland, Christina <Christina.Cleveland@arnoldporter.com>; mark.perry@weil.com; zzz.External.Luna.Barrington@weil.com <Luna.Barrington@weil.com>; zzz.External.Bambo.Obaro@weil.com <Bambo.Obaro@weil.com>; zzz.External.Luke.Sullivan@weil.com <Luke.Sullivan@weil.com>; thassi@debevoise.com;

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zzz.External.thomas.miller@dechert.com <thomas.miller@dechert.com>;
zzz.External.emainigi@wc.com <emainigi@wc.com>; jpitt@wc.com; zzz.External.apodoll@wc.com
<apodoll@wc.com>; Holler, John <John.Holler@arnoldporter.com>; Ellingsen, Andrew
<Andrew.Ellingsen@arnoldporter.com>

Subject: RE: 3:24-cv-00347-AN FTC et al. v. Kroger Co. et al. - Expert Report of Dr. Mark Israel

External E-mail

Counsel,

The errata provided are inadequate and appear to be inappropriate. First, Dr. Israel has simply listed places where changes have been made without identifying what those changes are. Given that his deposition will begin on Monday and that the Defendants served the errata on a Saturday night, we expect that Defendants will produce an errata that actually identifies these late changes to his report. Second, errata are supposed to correct typographical errors or omissions. Based on the fact that new backup files have been uploaded to the Compass Lexecon fileshare, it appears that the new report contains updated substantive analysis. The errata does not identify what mistakes or errors in substantive analysis are being accounted for in this new report. We expect Defendants will immediately explain what errors or mistakes Dr. Israel is accounting for in any new analysis and the basis for those errors.

Plaintiffs reserve all rights.

Thank you,

Rohan Pai

From: Ewart, Jason C. <Jason.Ewart@arnoldporter.com>
Sent: Saturday, July 20, 2024 8:13 PM
To: Dickinson, Charles <cdickinson@ftc.gov>; Pai, Rohan <rpa@ftc.gov>; Hall, Laura <lhall1@ftc.gov>; Wint, Corene <cwint@ftc.gov>; Ma, Rachel <rma@ftc.gov>; RobertBernheim-contact <Robert.Bernheim@azag.gov>; JaymeWeber-contact <Jayme.Weber@azag.gov>; NicoleGordon-contact <Nicole.Gordon@doj.ca.gov>; ShiraHoffman-contact <Shira.Hoffman@doj.ca.gov>; AmandaHamilton-contact <Amanda.Hamilton@dc.gov>; WillMargrabe-contact <will.margrabe@dc.gov>; PaulHarper-contct <Paul.Harper@ilag.gov>; BrianYost-contact <Brian.Yost@ilag.gov>; SchonetteWalker-contact <swalker@oag.state.md.us>; GaryHonick-contact <ghonick@oag.state.md.us>; LucasTucker-contact <LTucker@ag.nv.gov>; SamanthaFeeley-contact <SFeeley@ag.nv.gov>; JeffHerrera-contact <jherrera@nmag.gov>; JuliaMeade-contact <jmeade@nmag.gov>; CherylHiemstra-contact

<Cheryl.Hiemstra@doj.state.or.us>; AngieMilligan-contact <amilligan@lvklaw.com>; ChristineCortez-contact <cortez@lvklaw.com>; WilliamYoung-contact <william.young@wyo.gov>
Cc: Wolf, Matthew M. <Matthew.Wolf@arnoldporter.com>; Pfaffenroth, Sonia Kuester <Sonia.Pfaffenroth@arnoldporter.com>; Davis, Joshua M. <Joshua.Davis@arnoldporter.com>; Kientzle, Michael <Michael.Kientzle@arnoldporter.com>; Yasmine Harik -contact <yasmine.harik@arnoldporter.com>; Holler, John <John.Holler@arnoldporter.com>; Cleveland, Christina <Christina.Cleveland@arnoldporter.com>; mark.perry@weil.com; Luna.Barrington@weil.com; Bambo.Obaro@weil.com; Luke.Sullivan@weil.com; thassi@debevoise.com; mschaper@debevoise.com; srselden@dbevoise.com; nborn@dbevoise.com; jmfried@dbevoise.com; mcardena@dbevoise.com; tebuckley@dbevoise.com; htmehler@dbevoise.com; msventim@dbevoise.com; mike.cowie@dechert.com; james.fishkin@dechert.com; thomas.miller@dechert.com; emainigi@wc.com; jpitt@wc.com; apodoll@wc.com; Holler, John <John.Holler@arnoldporter.com>; Ellingsen, Andrew <Andrew.Ellingsen@arnoldporter.com>

Subject: RE: 3:24-cv-00347-AN FTC et al. v. Kroger Co. et al. - Expert Report of Dr. Mark Israel

Counsel –

Please see the attached errata and corrected report of Dr. Mark Israel. This report has been designated Highly Confidential pursuant to Paragraph 7 of the Stipulated Protective Order entered by Judge Nelson on April 29, 2024 in this matter on February 27, 2024.

Pursuant to Paragraph 11(b) of the Case Management and Scheduling Order entered by Judge Nelson on April 12, 2024, the backup data for the errata will be available shortly on the Compass Lexecon SFTP.

Thanks,
Jay Ewart

From: Ellingsen, Andrew <Andrew.Ellingsen@arnoldporter.com>
Sent: Monday, July 1, 2024 4:26 PM
To: cdickinson@ftc.gov; rpa1@ftc.gov; lhall1@ftc.gov; cwint@ftc.gov; rma@ftc.gov; robert.bernhheim@azag.gov; jayme.weber@azag.gov; nicole.gordon@doj.ca.gov; shira.hoffman@doj.ca.gov; amanda.hamilton@dc.gov; will.margrabe@dc.gov; paul.harper@ilag.gov; brian.yost@ilag.gov; swalker@oag.state.md.us; ghonick@oag.state.md.us; ltucker@ag.nv.gov; sfeeley@ag.nv.gov; jherrera@nmag.gov; jmeade@nmag.gov; cheryl.hiemstra@doj.state.or.us; amilligan@lvklaw.com; cortez@lvklaw.com; william.young@wyo.gov
Cc: Wolf, Matthew M. <Matthew.Wolf@arnoldporter.com>; Pfaffenroth, Sonia Kuester <Sonia.Pfaffenroth@arnoldporter.com>; Davis, Joshua M. <Joshua.Davis@arnoldporter.com>; Kientzle, Michael <Michael.Kientzle@arnoldporter.com>; Ewart, Jason C. <Jason.Ewart@arnoldporter.com>; Harik, Yasmine <Yasmine.Harik@arnoldporter.com>; Holler, John <John.Holler@arnoldporter.com>; Cleveland, Christina <Christina.Cleveland@arnoldporter.com>; mark.perry@weil.com; zzz.External.Luna.Barrington@weil.com <Luna.Barrington@weil.com>;

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tebuckley@dbevoise.com; htmehler@dbevoise.com; msventim@dbevoise.com;
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zzz.External.james.fishkin@dechert.com <james.fishkin@dechert.com>;
zzz.External.thomas.miller@dechert.com <thomas.miller@dechert.com>;
zzz.External.emainigi@wc.com <emainigi@wc.com>; jpitt@wc.com; zzz.External.apodoll@wc.com
<apodoll@wc.com>; Holler, John <John.Holler@arnoldporter.com>

Subject: 3:24-cv-00347-AN FTC et al. v. Kroger Co. et al. - Expert Report of Dr. Mark Israel

Dear Counsel,

Attached please find the expert witness report of Dr. Mark Israel. Note that this report is designated Highly Confidential pursuant to Paragraph 7 of the Stipulated Protective Order entered by Judge Nelson on April 29, 2024.

Pursuant to Paragraph 11(b) of the Case Management and Scheduling Order entered by Judge Nelson on April 12, 2024, the backup data and materials relied upon by Dr. Israel but not previously produced are being sent by FTP to the service list for this matter and the individuals identified by Complaint Counsel at Bates White.

Best,
Andrew

Andrew Ellingsen

Associate | [Bio](#)



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